MISCELLANY.

Profit on the Sale of Capital as Income under the Sixteenth Amentment.—In holding stock dividends not income within the meaning of the Sixteenth Amendment, the Supreme Court declared through Mr. Justice Pitney: "It is said that a stockholder may sell the new shares acquired in the stock dividend; and so he may, if he can find a buyer. It is equally true that if he does sell, and in so doing realizes a profit, such profit, like any other, is income, and so far as it may have arisen since the Sixteenth Amendment is taxable by Congress without apportionment. The same would be true were he to sell some of his original shares at a profit."[1] Notwithstanding this clear declaration that profit from the sale of capital is income, Judge Thomas of the federal court for the District of Connecticut has held the contrary in *Brewster* v. *Walsh* (D. C., Conn.) 268 Fed. 207. "There is no income from the sale of investments," he tells us. He appears to be convinced that the Supreme Court is directly opposed to its most recent utterance. He thinks that, in view of earlier declarations, Mr. Justice Pitney's statement "must mean that the profit derived from such transactions, if it is income, applies in the case of a trader and not in the case of an individual who merely changes his investments." This neglects the fact that the objector in the Stock Dividend Case was, to all appearances, not a trader but a lady investor. It neglects the caution taken by the Supreme Court to include profit from the sale of capital in its definition of the meaning of "incomes" in the Sixteenth Amendment. After saying that "Congress cannot by any definition it may adopt conclude the matter," the proper definition is put as follows: "Income may be defined as the gain derived from capital, or from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in the *Doyle* Case, 247 U. S. 183."[2] Though the *Doyle* Case involved the Corpora-

[1] *Eisner* v. *Macomber* (1920) 252 U. S. 189, 212, 40 Sup. Ct. 189.

[2] 252 U. S. 189, 207, 40 Sup. Ct. 189. The case referred to is *Doyle* v. *Mitchell Brothers Co.* (1918) 247 U. S. 179, 38 Sup. Ct. 467. The case involved income from the sale of timber. The stumpage value had not enhanced since the effective date of the Act of 1909, and it was held that the stumpage value as of that date could be deducted from the gross proceeds of the lumber. But the court declined to value the stumpage by subtracting the cost of lumbering from the price received for the product. Though in this case the gain taxed was due to the process of conversion, in *Hays* v. *Gauley Mountain Coal Co.* (1918) 247 U. S. 189, 38 Sup. Ct. 470, and *United States* v. *Cleveland, C. C. & St. L. Ry.* (1918) 247 U. S. 195, 38 Sup. Ct. 472, decided the same day, the doctrine of the *Doyle* Case was applied to hold taxable the gain derived from the sale of shares of stock, in so far as the gain had accrued since December 31, 1908, and to hold not taxable the gain accrued before. The exclusion of the prior gain was

tion Excise of 1909, and another case,[3] as Judge Thomas points out, had declared that what Congress meant by "Income" in that Act need not be restricted to technical income that would be taxable as such, this loses all significance after the definition of income in the *Doyle* Case is explicitly incorporated into the definition of income under the Sixteenth Amendment. Even if this definition and the other declarations in the Stock Dividend Decision were to be taken as technically *obiter*, they appear to be conclusive evidence of what the Supreme Court now thinks about the matter.

For his contrary conclusion Judge Thomas goes back to *Gray* v. *Darlington*[4] which held a profit on bonds bought in 1865 and sold in 1869 not income for the year 1869 under the Income Tax Act of 1867. He affirms that "the meaning of the word 'incomes' in the Sixteenth Amendment is no broader than its meaning in the Act of 1867." Yet in interpreting the Act of 1867, Mr. Justice Field had said that it "looks, with some exceptions, for subjects of taxation only to annual gains, profits, and income."[5] Among the exceptions noted is the gain from the sale of realty purchased within the two previous years. Obviously an interpretation of income in one section of the Act of 1867, which recognizes that other sections have a different meaning, is no criterion of the meaning of income in the Sixteenth Amendment, entitled to the slightest consideration as against a contrary explicit interpretation of that Amendment. All doubt whatever on the point would be foreclosed but for the fact that Mr. Justice McKenna in *Lynch* v. *Turrish*[6] quoted with approval Mr. Justice Field's statements in *Gray* v. *Darlington*[7] and remarked that the "case has not since been questioned or modified."[8] He cannot mean by this that the case or its doctrine has been uniformly followed in the interpretation of later statutes, for this is negatived by the cases under the Corporation Excise of 1909.[9] Mr. Justice McKenna adduced *Gray* v. *Darlington*[10] to dismiss the government's contention that gain accrued before the Amendment and the statute is income after-

based on the assumed intent of Congress to tax only gains accruing and realized after the effective date of the Act.

[3] *Stratton's Independence* v. *Howbert* (1913) 231 U. S. 399, 416, 34 Sup. Ct. 136. But the objection discountenanced in this case under the Act of 1909 was later discountenanced under the Act of 1913 in *Stanton* v. *Baltic Mining Co.* (1916) 240 U. S. 103, 36 Sup. Ct. 278.

[4] (1872) 15 Wall. (82 U. S.) 63.

[5] *Ibid.* p. 65.

[6] (1918) 247 U. S. 221, 38 Sup. Ct. 537.

[7] *Supra*, footnote 4.

[8] *Supra* footnote 6, p. 230.

[9] Cases cited in footnote 2, *supra*. See *Hays* v. *Gauley Mountain Coal Co.*, at p. 192, where Mr. Justice Pitney distinguishes *Gray* v. *Darlington* because of the difference between the Act of 1867 and the Act of 1909.

[10] *Supra*, footnote 4.

wards. He was not considering a case of gain accruing subsequent to the Amendment, like the one before Judge Thomas. Though Mr. Justice Field's language, which Mr. Justice McKenna approves, is somewhat ambiguous, it quite possibly means no more than that unrealized gain is not income and that a section of a statute which looks only to annual gains excludes gain accruing prior to the year of its realization. Even if Mr. Justice McKenna agrees with Judge Thomas, it is certain that Mr. Justice Pitney does not. and that the four dissenting judges in the Stock Dividend Case do not. Four and one make five; and five is more than half of nine. The importance of Mr. Justice Pitney's very clear statement is enhanced by the probability that it was designed to assure prospective critics that the Stock Dividend Decision would not render stock dividends eternally immune from the income tax. It is incredible that the Supreme Court will later go back on this assurance.

Though the law is "nothing more pretentious" than "the prophecies of what courts will do in fact,"[11] a genteel tradition permits legal discussion not confined to adventures in probing judicial psychology. One may therefore hope for pardon for a brief excursion into the mixture of metaphor, analogy and personal preference commonly called principle. Profits from the sale of capital satisfy the only two requisites of income thus far prescribed by the Supreme Court as part of the Sixteenth Amendment. These are gain and its realization. We may grant with Judge Thomas that "before the sale all the plaintiff possessed was capital without any part of it constituting income." This is because the second requisite of legal income was not yet added to the first. We may concede, too, that "the sale of capital results only in changing its form and like the mere issue of a stock dividend, makes the recipient no richer than before." But some changes in form are realizations and others are not. The stock dividend is held not income because not an adequate realization. A cash dividend [12] or a dividend in property is a realization,[13] though they too are merely changes in form which make the recipient no richer than before.[14] Mere realization of gain never makes one

[11] Holmes, *Collected Legal Papers* (1920) p. 173.
[12] *Lynch* v. *Hornby* (1918) 247 U. S. 339, 38 Sup. Ct. 543.
[13] *Peabody* v. *Eisner* (1918) 247 U. S. 347, 38 Sup. Ct. 546.
[14] In the two preceding cases of actual transfer of assets from the corporation to the stockholder, the court did not inquire into the circumstances under which the stockholder acquired his stock so as to discern whether the transfer represented any actual gain to him. The court held also that the dividends were income under the Sixteenth Amendment although they were the fruit of corporate profits that accumulated before the Amendment took effect. This shows that there may be income under the Sixteenth Amendment although the conversion or realization is not itself a gainful process. The Stock Dividend Decision, therefore, must rest on the absence of any adequate realization, and what it says about making the stockholder

richer. It only makes pre-existing gain more certain and more available. A lawyer who has worked ten years for a fee and reduced his claim to a judgment against a solvent client may count that judgment in his assets when he asks for credit. When the judgment is paid, he is no richer than he was the moment before; but by the payment his gain is realized and becomes income. The requisite of realization is not that the realization itself shall be a gain but that it shall extract a gain from that in which it heretofore inhered. Since gain is usually gradual and realization usually instantaneous, there would be little income from any source under a doctrine that the gain must not precede the realization. The only difference between gain realized by sale and gains realized by rents, interest, and dividends, is that usually the latter accrue within or near the year in which they are realized. Yet it would not be contended that a tenant five years in arrears does not add to his landlord's income when he finally pays up. The duration of the period during which the gain was accruing is important only because the progressive surtax rates are based on the realization within the given annual period, except when books are kept on an accrual basis. This undoubtedly is a hardship and may be regarded as inequitable. But it does not follow that it is unconstitutional. The Sixteenth Amendment is not by its terms limited to annual income. An income tax may be retroactive as to realization as well as gain.[15] The complaint against the taxation of gains from sale of capital is properly addressed only to the question of rates and not to the question of what constitutes income as distinct from capital. Of constitutional relief from oppressive rates the taxpayer can have little hope.[16] If the fruit of years of toil may be taxed as

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no richer cannot be taken to mean that the realization of gain is not income when the gain had accrued before the realization. In so far as Judge Thomas finds any comfort whatever in the Stock Dividend Decision, he is completely deluded.

The principal case raises another problem which the sweeping decision avoids. The stock sold was worth in 1913 considerably less than had been paid for it some years prior. The seller was taxed on the advance from 1913 which was in excess of his actual profit. If the statute excludes gain accrued before 1913, may it exclude loss accrued before 1913 but not realized? The hardship is apparent, and it would seem decent for Congress to take the valuation of 1913 or the original cost, whichever is higher, as the basis from which to reckon the profit. Yet, after all, the seller had made since 1913 all his gain since then, and it is hard to find any constitutional objection to modes of assessment that start with the situation when the power to impose an unapportioned income tax first arose. This is even less cruel than to tax as income the dividends produced after 1913 by a corporate surplus acquired earlier, particularly in the cases where the stockholder bought his stock at a price influenced by the existing corporate surplus.

[15] *Stockdale* v. *Insurance Co.* (87 U. S. 1874) 20 Wall. 323; *Brushaber* v. *Union R. R.* (1916) 240 U. S. 1, 20, 36 Sup. Ct. 236.

[16] See *Billings* v. *United States* (1914) 232 U. S. 261, 282-283, 34 Sup.

income for the year in which it is picked, the Supreme Court will hardly venture to hold that the cashing in of an unearned increment is not income, when it has so recently given a distinct declaration to the contrary.—*Columbia Law Review.*

Search of Person or Baggage.—The broad constitutional protection against unlawful search and seizure applies with equal force to the person, and, subject to the exception that an arresting officer has the right to search the person of a prisoner lawfully arrested and take from his person and hold for the disposition of the court any property connected with the offense for which he is arrested that may be used as evidence against him, or any weapon or thing that might enable the prisoner to escape or do some act of violence, it is as great a violation of the Constitution for an officer to search a person or baggage carried about by him, without a warrant authorizing it, as it is to search his premises. 2 R. C. L. p. 467; 5 Corpus Juris, p. 434; Ex parte Hurn, 92 Ala. 102, 9 South. 515, 13 L. R. A. 120, 25 Am. St. Rep. 23; State *v.* Clausmeier, 154 Ind. 599, 57 N. E. 541, 50 L. R. A. 73, 77 Am. St. Rep. 511; Getchell *v.* Page, 103 Me. 387, 69 Atl. 624, 18 L. R. A. (N. S.) 253, 125 Am. St. Rep. 307; Commercial Exchange Bank *v.* McLeod, 65 Iowa, 665, 19 N. W. 329, 22 N. W. 919, 54 Am. Rep. 36; Hubbard *v.* Garner, 115 Mich. 406, 73 N. W. 390, 69 Am. St. Rep. 581; Holker *v.* Hennessey, 141 Mo. 527, 42 S. W. 1090, 39 L. R. A. 165, 64 Am. St. Rep. 524; State *v.* Mausert, 88 N. J. Law, 286, 95 Atl. 991, L. R. A. 1916C, 1014; State *v.* Turner, 82 Kan. 787, 109 Pac. 654, 32 L. R. A. (N. S.) 772, 136 Am. St. Rep. 129; Youman *v.* Comm. (Ken.), 224 S. W. 860.

The First Strike.—The earliest recorded industrial protest was that made by the Jews against Pharaoh culminating in the exodus of the Israelites from Egypt. This ancient protest against the oppression of the capitalistic class seems to have possessed many of the characteristics of a modern strike. According to Holy Writ the dissatisfaction was caused by Pharaoh's order that the Israelites should provide their own straw to make bricks. According to speculative history it may have been due to the hereditary aversion of the Jews to manual labor. There is no record that the Israelites used any violence to prevent others from working for the same scale of wages, or invoked the modern strike weapons of the picket and boycott. They merely took French leave and with the assistance of the pliant and accommodating waters of the Red Sea attained the object of the strike—escape from the industrial bondage of Egypt.

Ct. 421, and *Brushaber* v. *Union Pacific R. R.* (1916) 240 U. S. 1, 24, 36 Sup. Ct. 236.

Constitutionality of Building Lines for Aesthetic Purposes.—How far will the courts go in recognizing the validity of building lines imposed without compensation? An answer to the question is unavoidable in view of the popular demand for building restrictions, zoning systems, and civic improvements in general.

It is clear that the building line deprives the owner of a property right,[1] but it is equally clear that if the restriction can be brought within a proper exercise of the police power, compensation is unnecessary.[2] However nebulous this police power may be, it may fairly be said to extend to the protection of the public health, morals, and safety, and to the promotion of the general welfare.[3] It is true that if property is taken under the right of eminent domain, compensation is a constitutional prerequisite.[4] But the police power and eminent domain are distinguishable, in that while the effect of the police power is to restrict a property right because it is harmful, that of eminent domain is to appropriate a property right because it is useful.[5] Since then the object of the building line is to restrict a detrimental use of a part of the land, it is at least in form a result that may be achieved by the police power.

Under this police power, obnoxious business uses of property may be prohibited,[6] other businesses, though not nuisances *per se*, may be excluded from certain districts,[7] business and residential districts

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[1] For a discussion of what is a taking or deprivation of property, see Old Colony & Fall River R. R. Co. *v.* Inhabitants of Plymouth, 14 Gray (Mass.), 155 (1859); Pumpelly *v.* Green Bay Co., 13 Wall. (U. S.) 166 (1871); Eton *v.* B. C. & M. R. R., 51 N. H. 504 (1872). For a discussion of the nature of property rights, see Everett V. Abbot, "The Police Power and the Right to Compensation," 3 HARV. L. REV. 189. See NOTE, "Actionable Injuries in Street Regulations," 33 HARV. L. REV. 451, 452.

[2] Mugler *v.* Kansas, 123 U. S. 623 (1887); C. B. & Q. Ry. Co. *v.* People, 200 U. S. 561 (1906). See 1 LEWIS, EMINENT DOMAIN, 2 ed., § 6.

[3] Beer Co. *v.* Mass., 97 U. S. 25 (1877); Crowley *v.* Christensen, 137 U. S. 86 (1890); C. B. & Q. Ry. Co. *v.* People, *supra*. It is of course true that the use of the term, "police power" has been attended by an unfortunate confusion of meaning. Its meaning oftentimes raises simply a question of the true limits of legislative power in general. See THAYER, LEGAL ESSAYS p. 27, note 1.

[4] Monongahela Navigation Co. *v.* United States, 148 U. S. 312 (1893).

[5] Commonwealth *v.* Alger, 7 Cush. (Mass.) 53, 86 (1851); Mugler *v.* Kansas, *supra;* See 1 LEWIS, EMINENT DOMAIN, 2 ed., § 6; see PRENTICE, POLICE POWER, p. 5.

[6] Watertown *v.* Mayo, 109 Mass. 315 (1872); The Manhattan Manuf. and Fertilizing Co. *v.* Van Keuren, 23 N. J. Eq. 251 (1872).

[7] Hadacheck *v.* Sebastain, 239 U. S. 394 (1915); People *v.* Village of Oak Park, 266 Ill. 365, 107 N. E. 636 (1915); Salt Lake City *v.* Western Foundry Works, 187 Pac. (Utah) 829 (1920); Myers *v.* Fortunato, 110 Atl. (Del.) 847 (1920).

may be altogether segregated,[8] and the height of buildings may be limited.[9] So building lines, in so far as they prevent the spread of fire and conduce to the health of the public, seem clearly within the scope of the police power. A recent case reaching this result is therefore unquestionably correct.[10] But in the decision there were intimations that aesthetic considerations were important. It becomes pertinent therefore to inquire whether such considerations alone will justify the imposing of building lines.[11]

Though it is recognized that provisions incidentally aesthetic will not vitiate otherwise valid restrictions,[12] no court, it seems, has yet gone so far as to sustain legislation whose sole object is to promote the aesthetic.[13] Bill board legislation has been sustained on grounds of fire prevention, safety of pedestrians, and the like,[14] and sometimes, it must be admitted, on grounds somewhat forced,[15] but the courts have squarely refused to adopt the aesthetic consideration as alone sufficient.[16] So legislation primarily aesthetic in purpose, which has sought to exclude retail stores from residential districts,[17] to promote the architectural symmetry of neighboring buildings,[18] or to impose building restriction to preserve fine views[19] has uniformly

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[8] Opinion of the Justices, 127 N. E. (Mass.) 525 (1920).

[9] Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745 (1907), aff'd in 214 U. S. 91 (1909); Cochran *v.* Preston, 108 Md. 220, 70 Atl. 113 (1908); Lincoln Trust Co. *v.* Williams Bldg. Corp., 229 N. Y. 313, 128 N. E. 209 (1920). See 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 696.

[10] Town of Windsor *v.* Whitney, 111 Atl. (Conn.) 354 (1920). See RECENT CASES, p. 434, *infra.*

[11] For a discussion of this general subject, see Willbur Larremore, "Public Aesthetics," 20 HARV. L. REV. 35; COMMENTS, "Exercise of the Police Power for Aesthetic Purposes," 30 YALE L. J. 171.

[12] Cusack Co. *v.* City of Chicago, 242 U. S. 526 (1917).

[13] See 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed. § 695.

[14] *In re* Wilshire, 103 Fed. (Cir. Ct. S. D. Cal.) 620 (1900); City of Rochester *v.* West, 164 N. Y. 510, 58 N. E. 673 (1900); Gilmartin *v.* Stanish-Barnes Co., 40 R. I. 219, 100 Atl. 394 (1917).

[15] See, for instance, St. Louis Poster Adv. Co. *v.* City of St. Louis, 249 U. S. 269 (1919).

[16] City of Passaic *v.* Paterson Bill Posting Co., 72 N. J. L. 285, 62 Atl. 267 (1905); Commonwealth *v.* Boston Adv. Co., 188 Mass. 348, 74 N. E. 601 (1905); People *v.* Murphy, 195 N. Y. 126, 88 N. E. 17 (1909); Haller Sign Works *v.* Physical Culture Training School, 249 Ill. 436, 94 N. E. 920 (1911). But see FREUND, POLICE POWER, § 182. Churchill *v.* Tait, 32 Phil. 580 (1915), *contra.*

[17] People *v.* City of Chicago, 261 Ill. 16, 103 N. E. 609 (1913); Willison *v.* Cooke, 54 Colo. 320, 130 Pac. 828 (1913); *cf.* Calvo *v.* City of New Orleans, 136 La. 480; 67 So. 338 (1915).

[18] Bostock *v.* Sams, 95 Md. 400, 52 Atl. 665 (1902); State, *ex rel.* Sale *v.* Stahlman, 81 W. Va. 335, 94 S. E. 407 (1917); *cf.* Ingraham *v.* Brooks, 111 Atl. (Conn.) 209 (1920).

[19] Quintini *v.* Mayor of City of Bay St. Louis, 64 Miss. 483, 1 So. 625 (1887); Farist Steel Co. *v.* City of Bridgeport, 60 Conn. 278, 22 Atl. 561 (1891).

been held unconstitutional. And building line schemes whose only object was the aesthetic have also been held unconstitutional.[20]

Now granting that the police power is a dynamic thing, it is submitted nevertheless that the results reached by the courts are correct. To the great mass of people irregular building lines or glaring bill boards are matters of trival annoyance. Except to the small minority, the unsightly view is but a slight irritation as compared with noisome smells [21] or nerve-racking noises,[22] which have fallen under the taboo of the police power. It is true that disregard of a building line may lessen the value of the neighboring property, but so may the well-meant but freakish design of an adjacent house; and at any rate restrictions for the benefit of the neighbor's property savor dangerously of private eminent domain.

But though an unaesthetic use of property may not be such a public annoyance as to warrant its restriction by the police power, it does not follow that there is not a sufficient public use to justify a taking by eminent domain. The very fact that the police power is exercised without compensation necessitates its more rigid limitation.[23] So, though the police power has never been exercised for aesthetic purposes alone, the same cannot be said of eminent domain. In the well-known case of *Attorney General* v. *Williams*,[24] a statute was sustained as valid which by eminent domain limited building heights to enhance the beauty of Copley Square. And a New York case [25] has held that the land included within the building lines is really a part of the street, and is subject to an easement of light and air in favor of the public. Thus the individual receives compensation for the property right of which he is deprived, but the public at the same time gets what it wants.

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[20] City of St. Louis *v.* Hill, 116 Mo. 527, 22 S. W. 861 (1893); Fruth *v.* Board of Affairs of the City of Charleston, 75 W. Va. 456, 84 S. E. 105 (1915); City of Buffalo *v.* Kellner, 90 Misc. 407, 153 N. Y. 472 (1915).

[21] The Manhattan Manuf. & Fertilizing Co. *v.* Van Keuren, *supra.*

[22] State *v.* White, 64 N. H. 48, 5 Atl. 828 (1886); *Ex parte* Foote, 70 Ark. 12, 65 S. W. 706 (1901).

[23] See Opinion of the Justices, 127 N. E. (Mass.) 525, 528 (1920). See FREUND, POLICE POWER, § 514.

[24] 174 Mass. 476, 55 N. E. 77 (1899). *Cf.* also the following cases in which property was taken for an aesthetic purpose, Parker *v.* Commonwealth, 178 Mass. 199, 59 N. E. 634 (1901), (restricting height of buildings near state capitol); Higginson *v.* Inhabitants of Nahant, 11 Allen 530 (1866); and Petition of Mt. Washington Road Co., 35 N. H. 134 (1857), (building of roads for purely scenic purposes).

[25] *In re* City of New York, 57 App. Div. 166, 68 N. Y. S. 196 (1901); *cf.* People *v.* Calder, 89 App. Div. 503, 85 N Y. S. 1015 (1903); Northrup *v.* City of Waterbury, 81 Conn. 305, 70 Atl. 1024 (1908); Benedict *v.* Pettes, 85 Conn. 537, 84 Atl. 332 (1912).

Cf. also State *v.* Houghton, 176 N. W. (Minn.) 158 (1920), in which a statute was sustained, which restricted by eminent domain the building of apartment houses in certain districts of the city.

Now of course no qualities of finality ought to be attributed to such a solution. Obviously as civilization advances, the public aesthetic sense will become more and more compelling. But for the present, it is believed that restrictions only with compensation will best strike a balance of convenience between the social interest in the individual's freedom of self-assertion, and the social interest in an attractive and well-ordered community.—*Harvard Law Review.*

A Disciple of Isaac Walton Not a Vagrant.—In Lewis *v.* State, 3 Ga. App. 322, 324, 59 S. E. 933, in reversing a conviction of vagrancy the court, by Chief Justice Hill, said:

"In this case the accused was without family, and his wants were probably few. He probably did not live in much luxury, but he lived without begging, and had a pig and a gun, and lived in a house. The witnesses declare that he was an ardent disciple of Isaac Walton. and was constantly seen going towards the river with his fishing pole on his shoulder, but that he was never seen with any fish. We are sure that the evidence is entirely insufficient to establish the charge of vagrancy. Doubtless on much stronger evidence a large portion of the population of our towns and cities could be declared vagrants. The community where this defendant was convicted must be exceptionally industrious, or has a very high standard of labor. The evidence shows that the defendant did some considerable work during every month prior to his arrest, and that his only relaxation from too constant toil in working crops, cutting and cording wood, and building houses was in 'plying his finest art, to lure from dark haunts, beneath the tangled roots of pendant trees,' the alert and wary denizens of the river. Surely it will not be said that while thus engaged he was idling. If he was not successful, all the greater proof of his patient and hopeful labor. The individual members of this court know that fishing is far from idleness, and the court is unwilling to give its judicial approval to a verdict which even remotely so indicates."

Liability of Member of Political Committee for Expenses.—Members of a voluntary committee organized to promote the interests of a candidate for election are held personally liable, jointly and severally, in Vader *v.* Ballou, 151 Wis. 577, 139 N. W. 413, 7 A. L. R. 216, for expenses incurred with their knowledge for the furthering of the enterprise, which are appropriate to the purpose for which the organization was formed. The plaintiff sought to recover from the defendant, as a member of a political committee, for the printing done for the committee at the order of its agent. It was reasoned that, since the members of the committee were aware of the work

that was being done, they were all liable to the plaintiff; and, since the liability was joint and several, the defendant was bound on the obligation incurred.

The rule that the members of a voluntary association, not organized for profit, are jointly and severally liable as principals on contracts purporting to have been made by, for or in the name of the association, when they have given either their assent or their subsequent ratification thereto, was applied in Richmond *v.* Judy, 6 Mo. App. 465, where it appeared that the plaintiff had been ordered to paint and post political bills and notices by one of the defendants, all of whom were members of a campaign committee. The plaintiff sought to recover for his work and material, the bills for which had been approved by some of the defendants. It was held that, since there was evidence tending to show that the orders were given with the sanction of the committee, all the members thereof might be held liable for the goods and services. The court said: "Persons who organize as a campaign committee on the eve of an election may, perhaps, be supposed to know that their associates, in the name of the committee, will incur certain obvious expenses in giving public notice of political meetings, and to sanction such outlay by the very fact of their organization."

It appeared in Sizer *v.* Daniels, 66 Barb. 426, that the plaintiff had been engaged by a "county committee" to advance the interests of a political party, and that they had contracted to pay a certain sum for expenses incurred therein. It was held that liability to the plaintiff was incurred only by those members who had voted for the resolutions employing the plaintiff, unless those not voting had authorized the others to take such action. The committee were not relieved of liability by the expiration of their term of office. A committee succeeding the defendants were not bound by the obligations incurred by their predecessors.

That members of a political party cannot be considered to have pledged their personal credit for the obligations of the party paper, is laid down in Hosman *v.* Kinneally, 43 Misc. 76, 86 N. Y. Supp. 263, and Lightbourn *v.* Wash, 97 App. Div. 187, 89 N. Y. Supp. 856. In the former case the plaintiff sought to recover for services performed on a newspaper, from the treasurer of a political party which conducted the paper. By statutory provision the plaintiff had no right of action against an unincorporated association, unless he might have proceeded against all the members of the association. It was held that the members of the party had never contemplated or authorized the transaction of business on their credit, nor would such authorization be presumed on the part of the members of an association except where the business transacted was necessary for the preservation of the association.

In the latter case, wherein the plaintiff, an employee on a paper published by the political party of which the defendant was treasurer, sought to recover for his services, it was held that he could not recover, since it did not appear that authority had ever been given to the defendant to contract any debts in excess of the funds established by the payment of membership dues. No assumption could be made that the members of a political party pledged their credit for the indebtedness of the paper.—*Case and Comment.*

Invention of Great Men.—The fact that in all the professions there is one first favorite means no more than the fact that there is only one editor of the London Times. It is not the man who is singular, but the position. The public imagination demands a best man everywhere, and if nature does not supply him, the public invents him. The art of humbug is the art of getting invented in this way. For example, there died a short time ago a barrister who once acquired extraordinary celebrity as an Old Bailey advocate, especially in murder cases. When he was at his zenith I read all his most famous defenses and can certify that he always missed the strong point in his client's case and the weak one in the case for the prosecution, and was in short the most homicidally incompetent impostor that ever bullied a witness or made a moving but useless appeal to a jury. Fortunately for him, the murderers were too stupid to see this; besides, their imaginations were powerfully impressed with the number of clients of his who were hanged, so they always engaged him and added to his fame by getting hanged themselves in due course.—*Fortnightly Review.*